

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6092

BILL NUMBER: SB 8

NOTE PREPARED: Jan 22, 2015

BILL AMENDED:

SUBJECT: Death Penalty Aggravator.

FIRST AUTHOR: Sen. Steele

FIRST SPONSOR: Rep. Cox

BILL STATUS: As Passed Senate

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
☐ **FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill makes a murder eligible for the death penalty if the murder involved decapitating or attempting to decapitate the victim while the victim was still alive.

Effective Date: July 1, 2015.

Explanation of State Expenditures: *Summary* – This bill would add an aggravating circumstance that prosecuting attorneys could use to request either the death penalty or life without parole.

Depending on future occurrences, expanding the sentencing options for the court could permit either more death penalty or life without parole trials to be conducted.

LSA examined the out-of-pocket expenditures that the state and counties incurred for 124 offenders who were committed to the Department of Correction (DOC) for murder and, in some cases, other felonies.

LSA found that the out-of-pocket expenditures associated with death penalty cases were significantly more expensive than cases for which prosecuting attorneys requested either life without parole or a term of years.

The following table summarizes the state and county out-of-pocket expenditures for these 124 murder cases.

Average State And County Out-of-Pocket Expenditures for 124 Offenders Committed to DOC for Murder by Original Request and Method of Disposition						
Original Request	Death		Life Without Parole		Term of Years	
Method of Disposition	Jury	Guilty Plea	Jury	Guilty Plea or Bench Trial	Jury	Guilty Plea
Number of Cases	8	28	15	16	44	13
State Expenditures	\$420,234	\$285,189	\$151,890	\$147,639	\$145,003	\$168,187
County Expenditures	\$369,347	\$148,513	\$33,532	\$17,289	\$26,477	\$49,209
Total Expenditure	\$789,581	\$433,702	\$185,422	\$164,928	\$171,480	\$217,396

Note: Expenditures are stated in 2013 dollars.

The state of Indiana pays for two different expenditures associated with murder trials.

First, the state reimburses counties through the state Public Defense Fund for a portion of the costs of legal defense services for indigent defendants. Almost all offenders surveyed were indigent. Of the 124 offenders, 6 paid for a portion of their own legal expenses.

Second, when a defendant is found guilty and is sentenced to be either executed or incarcerated or agrees to plead guilty, the person is committed to the Department of Correction.

The following table shows the average out-of-pocket expenditures incurred by the state of Indiana for these offenders.

Average State Out-of-Pocket Expenditures for Offenders Who Were Eligible for the Death Penalty Based on 124 Murder Cases Between 1995 and 2013						
Original Request	Death		Life Without Parole		Term of Years	
Method of Disposition	Jury	Guilty Plea	Jury	Guilty Plea or Bench Trial	Jury	Guilty Plea
Number of Cases	8	28	15	16	44	13
Incarceration/Execution	\$94,614	\$136,675	\$134,702	\$136,113	\$133,516	\$135,381
State Share of Indigent Defense	\$325,620	\$148,513	\$17,188	\$11,526	\$11,486	\$32,806
Totals	\$420,234	\$285,188	\$151,890	\$147,639	\$145,002	\$168,187

Note: Expenditures are stated in 2013 dollars.

Additional Information –

LSA's Data Set – To estimate what might be the added out-of-pocket expenditures of this proposal, LSA compiled the records of 124 offenders who have been committed to DOC facilities for murder and who are either:

- On death row
- Were sentenced to life without parole
- Qualified for either the death penalty or life without parole, but were sentenced to a term of years for both murder and another felony or felonies for which they were sentenced.

Original Request – The original request indicates whether the prosecuting attorney asked for either the death

penalty, life without parole, or a term of years.

Method of Disposition – The method of disposition indicates whether the defendant had a jury trial, a guilty plea, or a bench trial where a judge rather than a jury hears the case and determines both the verdict and the sentence.

For death penalty cases, the outcome could either be a death sentence, life without parole, or a term of years. In eight jury trials, six defendants received a death sentence and two received a sentence of life without parole.

If life without parole is requested, the court can sentence a defendant to either life without parole or a term of years.

If the prosecuting attorney requests neither the death penalty nor a life sentence without parole, then the court is limited to sentencing the defendant to a term of years in prison.

Indigent Defense – Under IC 33- 40-6-4, the state Public Defense Fund reimburses counties for 50% of the costs of the legal defense of indigent defendants when a death penalty case is being tried and 40% of the costs of murder cases when the prosecuting attorney requests either life without parole or a term of years.

Indigent defense costs include attorney fees, expert witnesses, investigations, paralegal costs, and costs of a direct appeal. The counties must comply with the standards adopted by the Public Defender Commission to be eligible for reimbursement. For the purposes of this analysis, LSA assumes that all counties are compliant and are eligible for reimbursement.

The offenders in this data set were tried and sentenced between 1995 and 2013. Because these offenders were sentenced over a range of almost 20 years, their expenditures are stated in 2013 dollars.

Incarceration / Execution – When these offenders are committed to DOC, LSA accounts for the marginal costs of each offender. These marginal costs include clothing, food, hygiene and medical care. Medical costs are based on the offender's age, and as they age, LSA increases their medical costs based on national data.

When the offenders either die or are released from prison, they are no longer included in the cost stream. LSA assumes that offenders who are sentenced to death are executed within 11 years. The costs of execution are included in the final year of their life.

Offenders with either a life sentence without parole or a series of long sentences that when added together will last their lifetime are assumed to die when they reach 80 years of age.

For offenders who were sentenced to a term of years, LSA used their earliest possible release date to estimate their possible age when they could be released or when they would die in prison.

Explanation of State Revenues:

Explanation of Local Expenditures: *Summary* – In criminal proceedings in Indiana, counties pay for the costs of jury trials and are reimbursed for a portion of the costs of the legal representation of indigent defendants. The following table summarizes the out-of-pocket expenditures counties incurred for 124 murder trials.

Average County Out-of-Pocket Expenditures for Offenders Who Were Eligible for the Death Penalty Based on 124 Murder Cases Between 1995 and 2013						
Original Request	Death		Life Without Parole		Term of Years	
Method of Disposition	Jury	Guilty Plea	Jury	Guilty Plea or Bench Trial	Jury	Guilty Plea
Number of Cases	8	28	15	16	44	13
Jury Trials	\$43,727	\$0	\$7,750	\$0	\$9,248	\$0
County Share of Indigent Defense	\$325,620	\$148,513	\$25,782	\$17,289	\$17,229	\$49,209
Totals	<u>\$369,347</u>	<u>\$148,513</u>	<u>\$33,532</u>	<u>\$17,289</u>	<u>\$26,477</u>	<u>\$49,209</u>

Note: Expenditures are stated in 2013 dollars.

Any added costs for the prosecuting attorney's office or the county sheriff are not included in this analysis.

Additional Information

Jury Trial Costs –The cost components for jury trials include jury per diem payments, meals, lodging, and transportation.

County Share of Indigent Defense – If the prosecuting attorney requests the death penalty, two attorneys who have experience representing death penalty defendants are required to represent the accused person. One defense attorney is required if the prosecuting attorney requests either life without parole or a term of years.

Indigent defense costs include attorney fees, expert witnesses, investigations, paralegal costs, and costs of appeals. The counties must comply with the standards adopted by the Public Defender Commission to be eligible for reimbursement from the state Public Defense Fund. For the purposes of this analysis, LSA assumes that all counties are compliant. The county can be reimbursed for 50% of the costs of a death penalty case or 40% when the prosecuting attorney requests either life without parole or a term of year.

Explanation of Local Revenues:

State Agencies Affected: DOC; Public Defender Commission.

Local Agencies Affected: Trial courts; Prosecuting attorneys; County sheriffs.

Information Sources: DOC; Public Defender Commission; LSA survey, Government consumption expenditures and gross investment: State and local (implicit price deflator)<http://research.stlouisfed.org/fred2/series/A829RD3A086NBEA>

Fiscal Analyst: Mark Goodpaster, 317.232.9852.